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10 JOHN MOORE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 MIDWEST QUALITY GLOVES, INC.,

18 Defendant.

Case No. RG13669066

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, John Moore (“Moore”), and
4 defendant, Midwest Quality Gloves, Inc. (“Midwest”), with Moore and Midwest each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Midwest employs ten or more persons and is a person in the course of doing business for
12 purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
13 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Midwest sold vinyl/PVC rainwear containing di(2-ethylhexyl)phthalate
16 (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65.
17 DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC rainwear containing
21 DEHP that are imported, manufactured, sold, or distributed for sale by Midwest in California
22 (collectively “Products”) including, but not limited to, the *Rain Coat, Style: 3048(#0 72264 30488 0)*.

23 **1.6 Notice of Violation**

24 On or about October 26, 2012, Moore served Midwest and certain requisite public
25 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
26 recipients of Moore’s allegation that Midwest was in violation of Proposition 65 for failing to warn
27 its customers and consumers in California that the Products expose users to DEHP.
28

1 **1.7 Complaint**

2 On or about February 27, 2013, Moore filed the instant action against Midwest (“Complaint”)
3 for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

4 **1.8 No Admission**

5 For purposes of this Consent Judgment, Midwest denies the material, factual and legal
6 allegations contained in the Notice and Complaint, and it maintains that all of the products that it has
7 sold and distributed in California, including the Products, have been, and are, in compliance with all
8 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
9 conclusion of law, issue of law, or violation of law by Midwest, nor shall compliance with this
10 Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law,
11 issue of law, or violation of law by Midwest. This Section shall not, however, diminish or otherwise
12 affect Midwest’s obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction
15 over Midwest as to the allegations in the Complaint, that venue is proper in Alameda County, and
16 that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

17 **1.10 Effective Date**

18 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 15, 2013.

19 **2. INJUNCTIVE RELIEF**

20 **2.1 Reformulation Commitment**

21 Commencing on the Effective Date and continuing thereafter, except as described in section
22 2.3 below, Midwest shall only manufacture, sell or distribute for sale in California Products that are
23 reformulated (“Reformulated Products”). For purposes of this Consent Judgment, Reformulated
24 Products are Products that meet the Reformulation Standards of Section 2.2 below.

25 **2.2 Reformulation Standard**

26 Reformulated Products shall mean Products that contain a maximum of 1,000 parts per
27 million (0.1%) DEHP content in any accessible component (i.e., any component that may be touched
28 or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing

1 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies
2 for the purpose of determining DEHP content in a solid substance.

3 However Midwest may ship, sell or offer to be shipped for sale in California a Product that
4 does not meet the Reformulated Products standard, if the following conditions are met: (i) Midwest
5 has determined that no Reformulated Product is “reasonably commercially available”; (ii) the
6 Product is not primarily intended for use by individuals twelve years of age or younger; and (iii)
7 Midwest complies with the warning requirements set forth in Section 2.3 below for all Product
8 beginning on the Effective Date. For purposes of this Section “reasonable commercial availability”
9 shall include consideration of the following factors: availability and supply of a Reformulated
10 Product; cost of the Reformulated Product; performance characteristics of the Reformulated
11 Product, including but not limited to performance, safety, and stability.

12 **2.3 Product Warnings**

13 Commencing on the Effective Date, Midwest shall, for all Products other than Reformulated
14 Products sold in California, provided the conditions in Section 2.2 are met, provide clear and
15 reasonable warnings as set forth below. Each warning shall be prominently placed with such
16 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
17 to be read and understood by an ordinary individual under customary conditions before purchase or
18 use. Each warning shall be provided in a manner such that the consumer or user understands to
19 which specific Product the warning applies, so as to minimize the risk of consumer confusion. For
20 Products containing DEHP, Midwest shall use the following warning language on all future Product
21 runs beginning on the Effective Date:

22
23 **WARNING: This product contains DEHP, a phthalate chemical**
24 **known to the state of California to cause birth defects**
and other reproductive harm.

25 **2.4 Vendor Notification Requirement**

26 To the extent it has not already done so, no more than thirty (30) days after the Effective
27 Date, Midwest shall provide the reformulation standards specified in section 2.2 for
28 Reformulated Products to any and all of its vendors of Products that will be sold or offered

1 for sale to California consumers, and shall instruct each vendor to use its best efforts to
2 provide only Reformulated Products, as such Products are defined in Section 2.2.

3 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b) & (d)**

4 In settlement of all the claims referred to in this Consent Judgment, Midwest shall pay a total
5 of \$15,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated
6 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
7 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
8 remaining 25% of the penalty remitted to Moore, as follows:

9 **3.1 Initial Civil Penalty**

10 Midwest shall pay an initial civil penalty in the amount of \$5,000 on or before the Effective
11 Date. Midwest shall issue two separate checks to: (a) “Office of Environmental Health Hazard
12 Assessment” in the amount of \$3,750; and (b) “The Chanler Group in Trust for John Moore” in the
13 amount of \$1,250. All penalty payments shall be delivered to the addresses listed in Section 3.3
14 below.

15 **3.2 Final Civil Penalty**

16 Midwest shall pay a final civil penalty of \$10,000 on or before December 15, 2013. The final
17 civil penalty shall be waived in its entirety, however, if, no later than December 1, 2013, an officer of
18 Midwest provides Moore with written certification that, as of the date of such certification and
19 continuing into the future, Midwest has met the reformulation standard specified in Section 2 above,
20 such that all Products manufactured, imported, distributed, sold and offered for sale in California by
21 Midwest are Reformulated Products. Moore must receive any such certification on or before
22 December 1, 2013. The certification in lieu of a final civil penalty payment provided by this Section
23 is a material term, and time is of the essence. Midwest shall issue two separate checks for its final
24 civil penalty payment to: (a) “Office of Environmental Health Hazard Assessment” in the amount of
25 \$7,500; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$2,500.

26 **3.3 Payment Procedures**

27 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

28 (a) All payments owed to Moore, pursuant to Sections 3.1 through 3.2, shall

1 be delivered to the following payment address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
8 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop
9 65 Penalties”) at the following addresses:

10 For United States Postal Service Delivery:

11 Mike Gyrics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyrics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street
21 Sacramento, CA 95814

22 With a copy of the checks payable to OEHHA mailed to The Chanler
23 Group at the address set forth above in 3.3.1(a), as proof of payment to
24 OEHHA.

25 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Midwest shall issue
26 separate 1099 forms for each payment to Moore, whose address and tax identification number shall
27 be furnished upon request after this Consent Judgment has been fully executed by the Parties, and
28 OEHHA at the addresses listed in Section 3.3.1 above.

29 **4. REIMBURSEMENT OF FEES AND COSTS**

30 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
31 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
32 issue to be resolved after the material terms of the agreement had been settled. Moore then expressed
33 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
34 The parties then attempted to (and did) reach an accord on the compensation due to Moore and his

1 counsel under general contract principles and the private attorney general doctrine codified at
2 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
3 this agreement. Midwest shall pay \$31,000 for fees and costs incurred as a result of investigating,
4 bringing this matter to Midwest’s attention, and negotiating a settlement in the public interest.
5 Midwest shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check
6 payable to “The Chanler Group” and shall deliver payment on or before the Effective Date, to the
7 address listed in Section 3.3.1a above.

8 **5. CLAIMS COVERED AND RELEASED**

9 **5.1 Moore’s Public Release of Proposition 65 Claims**

10 Moore, acting on his own behalf and in the public interest, releases Midwest, Midwest’s
11 downstream wholesale distributors and retail sellers of Midwest’s Products, from all claims for
12 violations of Proposition 65 up through the Effective Date based on exposures to DEHP from the
13 Products, as set forth in the Notice. Compliance with the terms of this Consent Judgment
14 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
15 imported, manufactured, sold or distributed for sale by Midwest, Midwest’s downstream wholesale
16 distributors and retail sellers of Midwest’s Products before the Effective Date, as set forth in the
17 Notice, or in compliance with the terms of this Consent Judgment.

18 **5.2 Moore’s Individual Release of Claims**

19 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
20 release herein which shall be effective as a full and final accord and satisfaction and as a bar to all
21 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
22 liabilities and demands of and by Moore of any nature, character or kind, whether known or
23 unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the
24 Products imported, manufactured, sold or distributed for sale by Midwest, Midwest’s downstream
25 wholesale distributors and retail sellers of Midwest’s Products before the Effective Date or in
26 compliance with the terms of this Consent Judgment.

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1 **5.3 Midwest’s Release of Moore**

2 Midwest on behalf of itself and on behalf of its past and current agents, representatives,
3 attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Moore and his attorneys and other representatives, whether in
6 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
7 matter, or with respect to the Products.

8 **6. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and shall
10 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
11 has been fully executed by all Parties.

12 **7. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
14 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
15 adversely affected.

16 **8. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of California
18 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
19 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Midwest may
20 provide written notice to Moore of any asserted change in the law, and shall have no further
21 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
22 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Midwest from any
23 obligation to comply with any pertinent state or federal toxics control laws.

24 **9. NOTICES**

25 Unless specified herein, all correspondence and notices required by this Consent Judgment
26 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
27 return receipt requested; or (iii) a recognized overnight courier to the following addresses and
28 telephone numbers:

1 For Midwest:

2 Stephen Franke, President
3 Midwest Quality Gloves, Inc.
4 835 Industrial Road
5 Chillicothe, MO 64601
6 660-646-2165

7 with a copy to:

8 Karl R. Morthole, Esq.
9 Law Office of Karl R. Morthole
10 57 Post Street, Suite 804
11 San Francisco, CA 94104
12 415-986-0227

13 For Moore:

14 The Chanler Group
15 Attn: Proposition 65 Coordinator
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710
19 510-848-8880

20 Any Party may, from time to time, specify in writing to the other Party a change of address or
21 telephone number to which all notices and other communications shall be sent.

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile or portable
24 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
25 taken together, shall constitute one and the same document.

26 **11. POST EXECUTION ACTIVITIES**

27 Moore agrees to comply with the reporting form requirements referenced in Health & Safety
28 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
§ 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
of obtaining such approval, Moore and Midwest agree to mutually employ their reasonable best
efforts, and those of their counsel, to support the entry of this agreement as a Consent Judgment, and
to obtain judicial approval of the settlement in a timely manner. For purposes of this Section,
“reasonable best efforts” shall include, at a minimum, cooperating on the drafting and filing of the
necessary moving papers, and supporting the motion for judicial approval.

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12. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

13. AUTHORIZATION

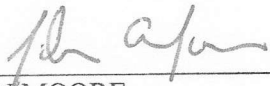
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agreed to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: APRIL 9, 2013

Date: _____

By: 
JOHN MOORE

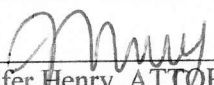
By: _____
Stephen Franke, President
MIDWEST QUALITY GLOVES, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 4-9-13

Date: _____

By: 
Jennifer Henry, ATTORNEY FOR
JOHN MOORE

By: _____
Karl R. Morthole, ATTORNEY FOR
MIDWEST QUALITY GLOVES, INC.

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12. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agreed to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: MARCH 26, 2013

By: _____
JOHN MOORE

By: Stephen J. Franke
Stephen Franke, President
MIDWEST QUALITY GLOVES, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 3/23/2013

By: _____
Jennifer Henry, ATTORNEY FOR
JOHN MOORE

By: Karl R. Morthole
Karl R. Morthole, ATTORNEY FOR
MIDWEST QUALITY GLOVES, INC.